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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 429

CARL TRAXLER,

Appellant

vs.

THE STATE OF MISSISSIPPI

APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSISSIPPI

STATEMENT AS TO JURISDICTION

FORREST B. JACKSON,
COLIN L. STOCKDALE,
Counsel for Appellant.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 429

CARL TRAXLER,

Petitioner

vs.

THE STATE OF MISSISSIPPI,

Respondent

STATEMENT OF JURISDICTION AND OTHER MATTERS REQUIRED BY RULE 12

In compliance with Rule 12 petitioner files his Statement of Jurisdiction and other matters required.

Statutory Provisions Sustaining Jurisdiction

Jurisdiction of the Supreme Court of the United States is invoked under Title 28, U. S. C., Section 1257 (3), being 62 Stat. 929, Chapter 646.

Federal Question Sought to Be Reviewed

Petitioner Traxler was denied his constitutional rights and guaranties against unreasonable search and seizure by the judgment and sentence of the Circuit Court of Rankin County, Mississippi, in permitting in evidence over objection of appellant a search warrant which did not meet the constitutional requirements of either the State of Mis-

sissippi or the United States in that it failed to describe the person to be seized or the place to be searched with that degree of particularity which would apprize the searching and arresting officer of the person or place to be seized or searched, and upon conviction based upon such warrant sentencing appellant to pay a fine of $500.00 and to serve 90 days in jail; that thereby, the trial Court, and by its affirmance, the Supreme Court of Mississippi has denied the Petitioner his constitutional guaranty against unreasonable search and seizure and further has contravened his rights under the due process clause of the Constitution of the United States.

Article IV of The Amendments to Constitution of the United States.

14th Amendment to Constitution of the United States Section 23 Constitution of Mississippi.

Timeliness of Appeal

The opinion of the Supreme Court of Mississippi is reported as *Traxler* v. *State*, — Miss. —, 67 So. 2d 292, decided October 19th, 1953. The Suggestion of Error was overruled on November 2d, 1953, and thereby the affirmance became final. The application for review here was granted by the Chief Justice of the Supreme Court of Mississippi on November 16th, 1953, and Supersedeas costs and appearance bond perfecting said appeal filed on November 17th, 1953.

Statement of the Nature of the Case and Rulings of the Courts Bringing the Case Within Jurisdictional Provisions on Which Reliance Is Made.

Appellant was tried de novo in the Circuit Court of Rankin County, Mississippi, upon a charge of unlawful possession of liquor.

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There was a verdict of "Guilty" in said charge and the Court sentenced the appellant to pay a fine of $500.00 and serve 90 days in jail.

The conviction rested on the introduction of the search warrant in question, which is set out in full in the petition for writ of certiorari, under which the search was made and petitioner arrested. Timely objection was made to introduction of this search warrant which named an "Unknown Owner" of a certain residence which was so inadequately described in said warrant as to fail to comply with the Constitutions of both the State of Mississippi and the United States.

After his conviction and sentence petitioner appealed to the Supreme Court of Mississippi reiterating the constitutional questions involved.

The Supreme Court of Mississippi affirmed the conviction and sentence and overruled the Suggestion of Error to its affirming opinion.

The precise constitutional questions set forth in the petition for writ of certiorari herein filed, and herein relied upon, were urged both in the Circuit Court; the Supreme Court of Mississippi on appeal, and again on Suggestion of Error in said Supreme Court.

The search based on this warrant, and subsequent arrest and conviction of the petitioner thereunder, were violative of petitioner's rights under Article IV of the Amendments to the Constitution of the United States and also of the due process clause of the 14th Amendment to the Constitution of the United States, as well as Section 23 of the Constitution of Mississippi.

Grounds Sustaining Jurisdiction and Demonstrating Substantial Federal Question

1

That the affirmance of the sentence of the trial Court imposed upon appellant by the Supreme Court of Mississippi, amounted to a deprivation of the appellant of the right to be secure in his person, houses, papers and effects, against unreasonable searches and seizures, in that the search warrant introduced against him did not particularly describe the place to be searched or the person to be seized as required by the Constitution.

2

That in overruling the Suggestion of Error filed to the opinion of the Supreme Court of Mississippi, said Supreme Court denied appellant his constitutional guaranties under both Article IV of the Amendments to Constitution of United States and the 14th Amendment to the Constitution.

3

The Supreme Court of Mississippi should have held said search illegal under the warrant and proof introduced, and reversed the cause.

United States v. *2615 Barrels of Beer*, 1 Fed. (2d) 500.
Cornelius on Searches and Seizures (2d Edition), Par. 198, pages 468-474.
Article IV of Amendments to U. S. Constitution.
14th Amendment to Constitution of U. S.

Compliance with Rule 12, Paragraph 2 was had.

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Conclusion

The Writ should be granted because important and substantial Federal Constitutional questions were disposed of by the State Courts contrary to the rights of Petitioner as herein set out and guaranteed him by the Constitution of the United States. Upon hearing there should be exercise of the supervisory powers of this Honorable Court upon the issues thus presented and determined.

Respectfully submitted,

FORREST B. JACKSON,
Of Counsel for Petitioner.
COLIN L. STOCKDALE,
Of Counsel for Petitioner.

P.O. Box 124, 201 Century Bldg.,
Jackson, Mississippi

APPENDIX "A"

IN THE SUPREME COURT OF MISSISSIPPI

No. 38,809

CARL TRAXLER

vs.

STATE

KYLE, *Justice:*

The appellant, Carl Traxler, was tried and convicted in the Circuit Court of Rankin County on a charge of unlawful possession of intoxicating liquor and was sentenced to pay a fine of $500 and to serve a term of ninety days in the county jail. From that judgment he prosecutes this appeal.

The testimony of the State's witnesses shows that D. P. Gayden, Jr., a deputy sheriff of Rankin County, obtained a search warrant from H. R. Sprague, a justice of the peace for Supervisor's District No. 2, authorizing the search of the residence and outhouses of the unknown owner of the 80-acre tract of land described as "all of SW¼ of Section 28, Township 5 North, Range 2 East, lying north of Pearson & Whitfield Road, in Rankin County, Mississippi." Acting under authority of the above mentioned search warrant, Gayden, accompanied by three investigators for the Alcohol and Tobacco Division of the Internal Revenue Department, proceeded to the place described in the search warrant for the purpose of making a search of the premises for intoxicating liquor. The officers arrived at the main dwelling house on the above mentioned tract of land about 4:00 o'clock p. m. and finding no one at home they drove to the top of a hill not far from the dwelling house and waited there, keeping watch for the owner or occupant. About thirty minutes later they saw a man drive up to the

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back door in an automobile and enter the house. The officers then drove back to the house for the purpose of making the search. The deputy sheriff knocked on the door, but no one came to the door. One of the officers then called to the man on the inside to "come and open up." The appellant came to the door and the deputy sheriff served the search warrant on him. Gayden testified that W. L. Polk, one of the federal officers with him, asked the appellant whether he had any whiskey in the house. The appellant in answer to the question said, "You will see when you get in there."

The officers proceeded to search the house and found in a closet in the front bedroom 29 one-gallon jugs of moonshine whiskey. Polk, who was personally acquainted with the appellant testified that the appellant called him out into the back yard to talk to him, and said to him that he wanted Polk "to make it light on him." Polk told the appellant that the case would be handled in the state court, and that the sheriff or his deputy would have charge of the prosecution. While the officers were in the house Fred D. Shanks, another member of the Alcohol and Tax Division force, picked up two small memorandum books which were lying on the table and gave them to Polk. The deputy sheriff arrested the appellant and carried him to Brandon. Polk accompanied the deputy sheriff and his prisoner to Brandon, and while on the way Polk questioned the appellant about the memorandum books which appeared to be books of account. Polk asked him how much whiskey he had on the books—was it around $1,000.00? The appellant said, "No, I got six or seven thousand, and I will take $100.00 for them now, if you will take them."

The testimony of the officers showed that the premises described in the search warrant were located about nine miles west of Brandon and that there was a small cabin

located near the main dwelling house, which was unoccupied. There was also another small building located on the 80-acre tract which was referred to as "the club house." This too was unoccupied at the time the search was made.

The appellant testifying in his own behalf stated that he was living in the house where the liquor was found at the time the officers made the search, and had been living there a little more than a year. He stated that he only had a room there; that his wife's stepfather and his wife's mother, and one Clyde Thompson, his wife's uncle, also lived in the house. He was then asked, "Where are those people?" And his answer was that Clyde Thompson had gone to New Orleans, and the last time he had heard from his wife's stepfather and mother they were on their way to South Carolina. The appellant stated that he had nothing to do with any part of the house other than the room that he occupied; that he did not know that the whiskey was in the house; and that the whiskey did not belong to him. The appellant admitted that he had been convicted twice, once on a liquor charge and once on a charge of trespassing. He stated that the small house near the residence which the officers searched was occupied, and that people sometimes stayed in the little club house. He stated that the account books mentioned above were old account books, and that the accounts mentioned were old accounts he had on the books before he was caught the first time.

The appellant's attorney argues as grounds for reversal on this appeal: (1) That the court erred in overruling the appellant's objection to the introduction of the affidavit and search warrant; (2) that the court erred in refusing to grant the appellant's request for a peremptory instruction; and (3) that the verdict of the jury was against the overwhelming weight of the evidence.

In support of his contention that the court erred in over-

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ruling his objection to the introduction of the affidavit and search warrant, the appellant contends that the description of the premises described in the affidavit and search warrant was so indefinite that the officers in making the search were unable to locate with reasonable certainty the property to be searched, and that the affidavit and search warrant failed to meet the requirements of Section 23 of the State Constitution. But this Court held in the case of *Loeb* v. *State*, 133 Miss. 883, 98 So. 449, that it was not necessary that the affidavit and search warrant contain such technical description of the place to be searched as is required in a deed of conveyance; and that "any description that will clearly give the officer information as to the location of the premises will be sufficient."

In the case of *Matthews* v. *State*, 134 Miss. 807, 100 So. 18, the Court held that the description of the premises to be searched as "the premises occupied by L. A. Matthews in District No. 5 (about 14 miles northeast of Hazlehurst), in said county and state," was sufficient. In the case of *Banks* v. *The City of Jackson*, 152 Miss. 844, 120 So. 209, the Court held that an affidavit for a search warrant which sufficiently described the premises by street and number, but alleged that the premises were used or occupied by "unknown occupant" was sufficient; and the Court in its opinion said, "Since the premises to be searched were sufficiently described otherwise, the name of the owner or occupant of the building was not essential in aid of the description of the place to be searched."

We think that the description of the premises described in the affidavit and search warrant that we now have before us was sufficient, and that there is no merit in the appellant's contention that the search warrant was void because of the indefinite description of the property to be searched.

We also think that the evidence was sufficient to support the verdict of the jury, and there was no error in the court's refusal to grant the peremptory instruction requested by the appellant.

The judgment of the lower court is therefore affirmed.

Affirmed.

McGehee, C.J., and Lee, Holmes and Lotterhos, JJ., concur.

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SUPREME COURT OF THE UNITED STATES

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No. 429

CARL TRAXLER,

Petitioner,

vs.

THE STATE OF MISSISSIPPI

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI

FORREST B. JACKSON,
COLIN L. STOCKDALE,
Counsel for Petitioner.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

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CARL TRAXLER,

Petitioner,

vs.

THE STATE OF MISSISSIPPI,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI

Your petitioner, Carl Traxler, respectfully petitions this Honorable Court for a writ of certiorari to the Supreme Court of Mississippi.

Statement of Constitutional Question Involved

This case involves the right of a citizen of the United States to security against unreasonable searches and seizures.

The appellant was tried in the Circuit Court of Rankin County, Mississippi, upon a charge of Unlawful Possession of Intoxicating Liquors, which charge was based upon the search of a house in Rankin County, Mississippi, under the search warrant in the following words and figures:

"SEARCH WARRANT

THE STATE OF MISSISSIPPI,
Rankin County:

To Any Lawful Officer of Rankin County:

WHEREAS, D. P. Gayden, Jr. has this day made complaint on oath before the undersigned officer in and for said

county, that he has reason to believe, and does believe that intoxicating liquor is being:

(1) Stored, kept, owned, controlled or possessed for purposes of sale in violation of law.

(2) Sold or offered for sale in violation of law.

in the place of business, storehouse, residence and out houses, barns, stalls, smokehouse, crib and in field, yard and garden, automobiles, trucks and woods near the place of business, storehouse, residence of Unknown Owner in the Second District of Rankin County, Mississippi, and on Section 28, Township 5, Range 2 in Rankin County, Mississippi, and more particularly described as the above specified premises and possessions of Unknown Owner located:

All of SW¼ of Section 28, Township 5 North & Range 2 East lying north of Pearson & Whitfield Road in Rankin County, Mississippi, in violation of the laws of the State of Mississippi, and

(3) Attempted to be transported by automobile, truck, or other motor-power means of transportation on the above specified premises and possessions aforesaid, And that Unknown Owner is or are suspected of being guilty of said violations in said county and state. And the undersigned having examined and considered said affidavit, and also after having heard and considered evidence in support thereof, doth find that probable cause for the issuance of a search warrant in the premises doth exist:

WHEREFORE, we command you that with such aid as in your judgment shall be needed, you do proceed in the day or night time, to enter by breaking if necessary and to diligently search said above described places, or any of them, in said county and state, for intoxicating liquor, making known to the person or persons in control thereof, if any, your authority for so doing, and if any intoxicating

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liquor be found, that you seize same, and if practicable, that you bring them before H. R. Sprague, Justice of the Peace, District #2 Rankin County, Mississippi, on the 1 day of July, 1952, and also arrest the said Unknown Owner and all other persons as may be in possession or control thereof, and bring them before H. R. Sprague, Justice of the Peace, District #2 Rankin County, Mississippi, on the 1 day of July 1952, and have then and there this writ, with your proceedings noted thereon. Herein fail not.

Witness my hand, this the 28 day of June, 1952.

H. R. SPRAGUE,
Justice of the Peace."

The introduction of this search warrant was objected to by appellant at the trial in the court below and a preliminary hearing had in the absence of the jury which established the fact that there were numerous houses, structures and residences located on the 80 acres of land described in the warrant. The Circuit Court after hearing this evidence overruled the objection to the introduction of the search warrant and permitted it to be placed in evidence before the jury, as a result of which appellant was convicted and sentenced to serve 90 days in jail and pay a fine of $500.00 and costs. From this conviction appellant appealed to the Supreme Court of Mississippi where the unconstitutionality of said search was urged, and again brought to the Court's attention by way of suggestion of error to the Court's opinion in affirming the judgment of the lower court.

It is the position of the appellant that the action of the Supreme Court of Mississippi in affirming the judgment and sentence of the Circuit Court and in overruling the suggestion of error to its opinion filed in this cause amounted to a deprivation of the rights of the appellant to security from unreasonable searches and seizures, in

that said warrant failed to particularly describe the place to be searched or the person to be seized, in violation of Section 23 of the Constitution of Mississippi and Article IV of the Amendments to the Constitution of the United States of America, and that he was further denied his rights and privileges of due process under the 14th Amendment to the Constitution of the United States.

This Court Has Jurisdiction

This Court has jurisdiction to review the judgment here in question under Title 28, (now Section 1257 (3)) Section 344, of the U. S. Code Annotated (being judicial Code, Section 237 Amended) which is as follows, to wit:

"(b) It shall be competent for the Supreme Court, by certiorari, to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by writ of error, any cause wherein a final judgment or decree has been rendered or passed by the highest court of a state in which a decision could be had where is drawn in question the validity of a treaty or statute of the United States; or where is drawn in question the validity of a statute of any state on the ground of it being repugnant to the Constitution, treaties, or laws of the United States; *or where any title, right, privilege, or immunity is specially set up or claimed by either party under the Constitution,* or any authority exercised under, the United States; and the power to review under this paragraph may be exercised as well where the Federal Claim is sustained as where it is denied. Rule 30, Rules of the Supreme Court of the United States."

Jurisdiction is sought on the grounds that the petitioner, Carl Traxler, was denied his constitutional rights as herein set out and that the Supreme Court of Mississippi has decided a constitutional question in direct conflict with Amendment IV to the Constitution of the United States

and in direct conflict with the 14th Amendment to the Constitution of the United States and the due process clause thereunder.

This appeal is from a final judgment by the highest Court in the State of Mississippi in which the decision could be had. The Suggestion of Error was overruled on the 2nd day of November, 1953, and the application for review was granted by the Chief Justice of the Supreme Court of Mississippi on the 16th day of November, 1953, and that the appeal to this Honorable Court was perfected by the posting of a cost bond and appearance bond with supersedeas approved by the Clerk of the Supreme Court of Mississippi on the 17th day of November, 1953.

There has been a final determination of a constitutional question by the highest Court of the State of Mississippi and petitioner has exhausted all his remedies in the State Courts, and he now, therefore, seeks to have the decision of the Mississippi Supreme Court reviewed on certiorari by this Honorable Court.

Reasons Relied Upon for the Allowance of the Writ

A substantial constitutional question presents itself with respect to the right of the accused to security from unreasonable searches and seizures.

At line 13, Page 15 of the Record in this cause in the trial of the case on the merits the searching and arresting officer D. P. Gayden Jr., testified as follows:

> Q. "You did know there were other residences on the 80 acres, and this was the only house you searched under the warrant?
>
> A. Yes.
>
> Q. And if you had wanted a warrant for the club house you would have gotten one?
>
> A. If I had known it was there.
>
> Q. If you had wanted a warrant for the tenant house you would have gotten one?

A. I got a search warrant for the residence on this 80 acres.

Q. You got a search warrant for a residence on this 80 acres and you don't know who owned it, and you don't know whether this residence comprised 1 acre of land or the entire 80, although there were other residences there?

A. I wouldn't say that I know, but I know it was on this land." * * *

Since the search warrant herein complained of described as the place to be searched and the person to be seized,

"* * * the premises and possessions of unknown owner, located all of SW¼ of Section 28, Township 5 North and Range 2 East, lying North of Pearson & Whitfield Road in Rankin County, Mississippi, * * *"

and the officer Gayden testified as above shown that he did not know who owned the house he searched but he did know there were other residences on this 80 acres of land described in the warrant, we respectfully submit that the warrant did not particularly describe the place to be searched or the person to be seized with that degree of specificness required under both the Constitutions of Mississippi and of the United States of America.

We respectfully submit that this warrant could not have enabled an officer making a search thereunder to locate the residence to be searched with reasonable certainty or the person to be seized which is necessary under the Constitution of our land.

Prayer

WHEREFORE, your petitioner prays that a writ of certiorari issue under the seal of this Court directed to the Supreme Court of the State of Mississippi, commanding said Court to certify and send to this Court a full and com-

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plete transcript of the record and of the proceedings of the said Supreme Court of Mississippi had in the case numbered and entitled on its docket Number 38,809, Carl Traxler vs the State of Mississippi, to the end that this cause may be reviewed and determined by this Court as provided for by the statutes of the United States; and that the judgment of the said Supreme Court of Mississippi may be reversed by this Court, and for such further relief as to this Court may seem proper.

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(8470)

JANUARY 31, 1955.

Decisions Per Curiam.

No. 429. TRAXLER *v.* MISSISSIPPI. Appeal from and petition for writ of certiorari to the Supreme Court of Mississippi. *Per Curiam:* The appeal is dismissed for want of jurisdiction. 28 U. S. C. § 1257 (2). The petition for writ of certiorari is denied. *Forrest B. Jackson* for appellant-petitioner. Reported below: 220 Miss. 354, 67 So. 2d 292.

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